



# Ethics News

Issue No. 44

Official Newsletter of the Indiana State Ethics Commission

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## Ethics Commission Moves Uptown

The State Ethics Commission has moved on up to the ISTA Building:

Indiana State Ethics Commission  
150 W. Market St., Suite 414  
Indianapolis, IN 46204

You still can reach us at:

Telephone: (317) 232-3850

Fax: (317) 232-0707

email: [ethics@ethics.state.in.us](mailto:ethics@ethics.state.in.us)

## Governor Appoints New Commissioner

Clare Kraegel Nuechterlein was appointed by Governor Mitch Daniels June 2005 to a four year term which expires September 1, 2007. Ms Nuechterlein is a professor at Valparaiso University School of Law, from which she graduated in the centennial class of 1979. Professor Nuechterlein earned her undergraduate and master's degrees from Valparaiso University.

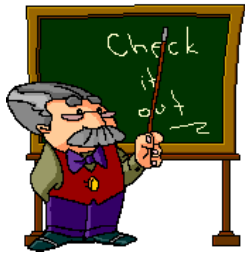
Professor Nuechterlein began her legal career as City Attorney of Goshen, Indiana and also served as a member of the Board of Public Works and Safety from 1980-1983.

From 1986-1989, Ms. Nuechterlein was an attorney advisor with the United States Department of Education, Office for Civil Rights, in Washington, D.C., where she advised the Presidentially-appointed Assistant Secretary for Civil Rights.

From 1989-2000, Ms. Nuechterlein was a trial attorney with the United States Department of Justice/Assistant United States Attorney for the Eastern District of California in Sacramento, where she litigated federal law enforcement cases in the federal trial courts and the Ninth Circuit Court of Appeals. She and her husband, Christopher A. Nuechterlein, moved back to Indiana in 2000 when he assumed his position as United States Magistrate Judge for the Northern District of Indiana, South Bend Division.

## Frequently Asked Questions

Please note: Advisory opinions may be found on the Commission's Web site at <http://www.in.gov/ethics/advis/>.



**Q.** Does the Ethics Commission have jurisdiction over state legislators?

**A.** The Ethics Commission **does not** have jurisdiction over legislators. The commission has jurisdiction over the following persons:

- (1) A current or former state officer.
- (2) A current or former employee.
- (3) A person who has or had a business relationship with an agency.
- (4) A current or former special state appointee.

**Q.** What is meant by “state employee?”

**A.** An “employee” is defined as “an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.”

**Q.** What is meant by “special state appointee?”

**A.** A “special state appointee” means a person who is:

- (A) not a state officer or employee; and
- (B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:
  - (i) is authorized by statute or executive order; and
  - (ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.

**Q.** Are state employees allowed to give one another gifts for birthdays and holidays?

**A.** It is acceptable for employees to give one another gifts since the rule only bars gifts to and from those in a business relationship. Employees do not fall under the definition of business relationship since a typical employee does not deal with the agency on a contract basis nor request a permit that requires the discretion of the agency. However, supervisors are cautioned to be aware of gifts that may be perceived as attempts to influence them in their official capacity. Remember, as government employees it is of utmost importance that we maintain the highest ethical standards and the gift rule is in place to assure fairness in the selection process for contracts and permits.

**Q.** Are state employees totally banned from accepting anything from a person who has a business relationship with their agency?

**A.** There are some exceptions to the gift rule which include:

- (1) Gifts, favors, services, entertainment, food, or drink from public agencies or public institutions.
- (2) Mementos or souvenirs of nominal value.
- (3) Political contributions subject to IC 3-9-2 that are reported in accordance with applicable law.
- (4) Nominal refreshments offered to a state employee conducting official state business while he or she is at a workplace of a person who has a business relationship or seeks to influence official action with the employee's agency.
- (5) Discount and other promotional programs approved and made available to state employees through the state personnel department or the Indiana department of administration.
- (6) Public meetings to which at least 25 or more individuals are invited. (see the gift rule for public meeting defined.)

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For a complete listing of exclusions to the gift rule, [click here](#).

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**Q.** Are state employees allowed to have pictures taken of themselves with political figures displayed in their cubicles and offices?

**A.** Displaying a photograph of an employee taken with a political figure, by itself is not actually "engaging" in political activity. There does not seem to be a campaign message or solicitation involved. It is different than wearing a shirt that displays a campaign slogan, or having a campaign sign in your office. Those items were generated during a political campaign for the purpose of advertising and marketing a political candidate or message. Simply having a picture taken with a person, even if they are a famous politician does not seem to approach that level of attempted persuasion.

**Q.** May an employee receive payment for a speech, an appearance or an article they may have written?

**A.** The ethics rule regarding honoraria states: "An employee shall not personally accept an honorarium for himself or herself for anything that may be considered part of the state employee's official duties. However, a state employee may accept an honorarium on behalf of the state. The state employee accepting the honorarium shall remit to the treasurer of state any amount received...."

Pursuant to the rule, the employee who gives, for example, a presentation that is in the course of the employee's official duties has two choices:

- (1) decline the honorarium; or
- (2) remit the honorarium to the state treasurer.

If the employee directs the payment of the honorarium to a third party, the employee has exercised control over the honorarium which constitutes "acceptance" under the rule.

## How Well do You Know the Political Activity Rule?

### 40 IAC 2-1-7.1



Are you planning on running for office? Does your co-worker wear campaign buttons to work? Did your supervisor ask you for campaign contributions? Is your agency head soliciting political contributions for a political candidate?

If you run across any types of these situations, would you know what to do?

The political activity rule does not prohibit employees from engaging in political activity, but it does set restrictions on what employees may do in certain situations.

Indiana law says that no employee shall be prohibited from engaging in political activity except when on duty, when acting in an official capacity, or when otherwise provided by state or federal law. In the Commission's view, employees may:

- Vote;
- Express views as a citizen in a private setting;
- Sign a petition to get a candidate on a ballot;
- Make personal contributions to candidates;
- Wear buttons and similar expressions of opinion when not on duty and not in the work place;
- Place a sign in their yard; and
- Place a political bumper sticker on a personal vehicle used in commuting to and from state employment.

What types of activities should employees avoid? Prohibited activities include:

- Engaging in political activity when on duty or acting in an official capacity. Such activities include wearing or displaying buttons or other visible advertising of a political preference, making political phone calls, stuffing envelopes;
- Soliciting political contributions when on duty or acting in an official capacity;
- Soliciting political contributions at any time from persons whom the employee knows to have a business relationship with the employee's agency; and
- Soliciting political contributions at any time from state employees directly supervised by the employee.

Executive Order 05-12 lays out further restrictions for agency heads, special state appointees and employees with procurement authority. These employees may not solicit political contributions for anyone running for office. The only exception is when one of the above mentioned employees is the candidate, then that employee may raise funds for himself/herself.

State employees who are employed by a state agency in connection with programs financed in whole or part by federal funds need to be aware of the Hatch Act. The Hatch Act is federal law. It has application to state and local officials, but its interpretation is not within the scope of the Ethics Commission's jurisdiction. Requests for advisory opinions in regard to the Hatch Act are directed to the Office of Special Counsel at (800) 854-2824 (or see [www.osc.gov](http://www.osc.gov) for your inquiry).

**Note:** The above article does not cover all aspects of the political activity rule. For specific questions, contact your [Ethics Officer](#) or the [State Ethics Commission](#).

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## From the Office of Inspector General

by David Thomas, Inspector General

The Office of Inspector General is in full swing. We have received over 450 requests for investigation. We are actively investigating more than 50 of these cases. Approximately 60 more cases are waiting for us to review for future investigations. The remaining cases have either been fully investigated and concluded or closed for the reasons of our having no jurisdiction or insufficient cause to proceed to full investigations.

We are pleased to find that many of our investigations are being suggested by state employees and persons within the agencies. The cooperation we have been receiving from internal investigations is also impressive to us. For example, FSSA investigators Wendell Hoskins and Harry Gurnell have been very interactive in bringing to us cases where they have already made great advancements. The State Board of Accounts and Deb Curry of FSSA audit have also been generous to our office in providing assistance. We then have assisted them in preparing the cases to be completed. The cooperation we have received from other agencies has also been greatly appreciated.

In closing, one of our major goals is to receive requests for investigations through a forum which was unavailable before our existence. In pursuing our three areas (criminal cases, ethics violations and efficiency suggestions), the teamwork we have received from other state employees has exceeded our expectations.

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### 2005 Ethics Classes

<b>Ethics Orientation</b>	<b>Supervisors &amp; Managers</b>
(10:00 - 11:00 a.m.)	(10:00 - 11:30 a.m.)
Classes in CC 14	Classes in CC 17
October 18; December 5	October 20; December 8
Classes are in the Conference Center (CC), Indiana Government Center South. Room assignments may change. Please check directory on day of class.	
To register, call (317) 233-3767 or click here, <a href="#">Schedule of Classes</a> .	